

188681

STATE OF SOUTH CAROLINA

(Caption of Case)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

Application of Jacobb Utilities LLC
for approval of a contract with Tigee
Management Investments LLC to
serve Phase I Rocky Ford Development

DOCKET
NUMBER: 2007 - 366 - S

(Please type or print)

Submitted by: Allen and Eakes

Address: P.O. Box 1405

Anderson SC 29622

James S. Eakes

SC Bar Number:

Telephone:

864 224-1681

Fax:

864 231-8411

Other:

Email:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input checked="" type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

ALLEN AND EAKES

ATTORNEYS AT LAW

P.O. BOX 1405

ANDERSON, S. C. 29622

RICHARD K. ALLEN, JR.*
JAMES S. EAKES*

THOMAS ALLEN (1881-1963)
RICHARD K. ALLEN (1921-1982)

* CERTIFIED CIVIL COURT MEDIATOR

TEL. (864) 224-1681
114 WEST ORR STREET
ZIP 29625
FAX (864) 231-8411

October 1, 2007

~~VIA - FIRST CLASS MAIL~~ St Federal Express

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Application of Jacabb Utilities, LLC for approval of a contract with Tiger Management Investments, LLC to serve Phase I Rocky Ford Development

Dear Mr. Terreni:

Enclosed for filing are the original and ten (10) copies of the Application of Jacabb Utilities, LLC in the above reference matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me via first class mail.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

ALLEN & EAKES



James S. Eakes
Attorney at Law

Enclosure

cc: Dukes Scott, Executive Director, ORS
Stephen R. Goldie, Jacabb Utilites, LLC

COPIES
2007 OCT -1 PM 11:07
FBI/DOJ

**James S. Eakes
Allen and Eakes
PO Box 1405
Anderson, SC 29622**

(864) 224-1681

S.C. Bar # 1820

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-366-S

RECEIVED
2007 OCT -11 AM 11:07
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

IN RE:

Application of Jacabb Utilities, LLC for
approval of a contract with Tiger
Management Investments, LLC to serve
Phase I of Rocky Ford Subdivision

APPLICATION

Jacabb Utilities, LLC ("Applicant" or "Utility") hereby submits a contract between it and Tiger Management Investments, LLC ("Developer") for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. R.R. 103-541 and 103-743 (Supp.2006). In support of this Application, Applicant would respectively show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Commission in Oconee County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. The Commission currently has on file a Notice of Intent to File for Rate Increase on behalf of the Utility pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2006).
2. The Applicant seeks approval of an agreement entered into between Applicant and the Developer dated September 28, 2007 ("Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". Under Article III, § 1 of the Agreement, Applicant will provide service to the proposed development pursuant to all of

the terms, conditions, rates and charges set forth in its existing rate schedule as are on file with this Commission and in effect from time to time. Pursuant Article VI § 1 of the Agreement, Applicant requests the Commission approve an availability fee of fifteen dollars (\$15) per month/per lot to be paid to the Applicant by the Developer if sewer service is available but not used.

3. Pursuant to this agreement, Applicant proposes to serve Phase I of the Rocky Ford Subdivision which will consist of approximately two hundred and fifty (250) single family residences. The Agreement provides, *inter alia*, that Developer will construct all of the necessary sewer facilities (“Facilities”) required to serve the Property, acquire all necessary easements and rights-of-way (“Easements”) and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

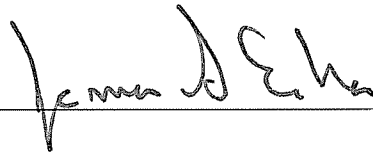
4. The proposed development is within Applicant’s Commission authorized Service Area in Anderson County. Accordingly, no other public or governmental utility is authorized to serve the proposed development.

5. Pursuant Article II, §13 of the Agreement, Applicant has agreed to reserve adequate utility capacity for up to two hundred and fifty (250) wastewater connections located within the Property. Further, the terms of this contract allow the Developer to expand the Facilities for additional units and Applicant has agreed to allow the additional units to connect and discharge into the Facilities.

6. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required. See S.C. Code Ann. § 58-5-240(G) (Supp.2006).

7. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement, be approved; that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.



James S. Eakes
Allen and Eakes
PO Box 1405
Anderson, SC 29622
(864) 224-1681

Attorney for Applicant

Anderson, South Carolina
This 1st day of October, 2007

AGREEMENT FOR SEWER SERVICES
TIGER MANAGEMENT INVESTMENTS, LLC
ANDERSON COUNTY, SC

This Agreement is entered into this day of Sept 28, 2007 by and between Tiger Management Investments, LLC (hereinafter referred to as "Developer"), and Jacabb Utilities, LLC, a South Carolina corporation (hereinafter referred to as "Utility") (Developer and Utility treated collectively herein as "Parties").

WITNESSETH

WHEREAS, Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate located off of U.S. Highway 29 in Anderson County, South Carolina (hereinafter referred to as the "Site" or "Project") (see "Exhibit 1").

WHEREAS, Developer desires to develop Rocky Ford Subdivision which will initially contain approximately two hundred and fifty (250) single family residences and possibly other commercially or residentially developed land contiguous to the Site (treated herein as "Phase 1"), from which the total sewage flow would not exceed 100,000 gallons per day based upon the South Carolina Department of Health and Environmental Control ("DHEC") unit contributory guidelines.

WHEREAS, Developer may later opt to develop Rocky Ford Subdivision further adding an additional five hundred (500) single family residences (or other commercially and/or residentially developed land contiguous thereto), for a total of seven hundred and fifty (750) single family residences (or the equivalent thereof), from which the total sewage flow would not exceed 300,000 gallons per day based upon DHEC unit contributory guidelines.

WHEREAS, Utility is a privately owned utility engaged in the business of furnishing sewer services to the public and is fully capable of providing sewer service to the Rocky Ford Subdivision and contiguous parcels located in Anderson County. Utility is subject to regulation by the South Carolina Public Service Commission pursuant to S.C. Code §58-5-210 *et seq.*

WHEREAS, Utility desires to have constructed and installed, and the Developer desires to construct and install, the wastewater collection and treatment facilities ("Facilities") to serve the Site and contiguous parcels according to the terms and conditions of this Agreement.

WHEREAS, Goldie & Associates, Inc. ("Engineer") designed the Facilities for Phase 1 of this Site and Utility understands that construction will be completed in compliance with the design and specifications provided by the Engineer. In relation to later phases of development, Utility understands that construction will be completed in compliance with the design and specifications provided by the Engineer or, alternatively, another later retained licensed engineering firm ("Subsequent Engineer") that completes such designs and specifications with the approval of the plan and specifications by the Utility, which will not be unreasonably withheld.

WHEREAS, Developer desires Utility to provide wastewater utility service within the Site and contiguous properties and Utility desires to provide wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the Parties hereto agree as follows:

ARTICLE I

Representations and Warranties of the Parties

1. The Utility represents and warrants that it employs and will continue to employ personnel with credentials equivalent to those generally accepted in the industry and/or as are required by applicable law to operate the Facilities and furnish sewer collection and treatment services to residents living at the Site or contiguous properties.
2. The Utility represents and warrants that it has reviewed the Engineer's plans and designs and represents the plans and designs are sufficient to serve Phase 1 of the Site in their current form.
3. The Utility represents and warrants that it has reviewed the Engineer's plans and deems them sufficient to allow later development of the Site and contiguous properties as contemplated herein, with certain required upgrades and capacity expansions to the Facilities. In this regard, Utility represents and warrants that the pipelines reflected by the Engineer's existing plans and designs have sufficient capacity to render service for future development plans on the Project.
4. The Utility represents and warrants that it will cooperate with the Engineer or Subsequent Engineer in completing any and all additional plans and designs necessary to complete later phases of development of the Project.
5. Utility represents and warrants: that it has obtained an NPDES Surface Water Discharge Permit and that the NPDES permit is sufficient and will be sufficient in the future to accommodate the resulting discharge from a total of seven hundred and fifty (750) residential units at the Site (or other commercially and/or

residentially developed land contiguous thereto); that, as acknowledged by the NPDES permit, Little Beaverdam Creek, into which the effluent from these Facilities will be discharged, has approved capacity for the total eventual discharge into this waterway; and that Utility shall reserve such stream capacity, relative to its effluent discharges, to ensure the 750 residential units (or equivalent thereof) from the Project can be adequately and readily served. All other state, federal and local permits, required for the Project, will be obtained prior to the use of the Facilities.

6. Utility and Engineer represent and warrant that they shall refrain from engaging in any conduct which could potentially prevent or impair Developer's ability to complete later phases of the Project as contemplated by this Agreement. This includes but is not limited to applying for or assisting any third party, other than Developer, in securing federal, state, or local permits which might allow the diminishment of stream capacity in Little Beaverdam Creek relative to effluent discharges.
7. Developer represents and warrants that it will convey to the Utility, by recordable deed, such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement. The conveyance shall be free and clear of all liens and encumbrances except that the Parties agree that conveyance of any such property rights shall be subject to Article V which grants the Developer with an Option to Repurchase all conveyed property interests under certain prescribed conditions.

8. Developer will convey to Utility by recordable instruments and provide by recorded subdivision plats such easements or rights of way as the Utility may reasonably require for the Utility's performance of its obligations under this Agreement. The Parties agree that conveyance of any and all such property rights shall be subject to Article V.
9. The Parties represent and warrant to each other that they will cooperate fully with each other in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement.
10. Other than as otherwise stated herein, neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Site, or any other parties or made any representations to any such purchasers or other parties wherein such purchaser or other parties have acquired any interest in Facility to be installed under this Agreement.

ARTICLE II

Obligations and Construction of Facilities

1. In accordance with the plans and specifications prepared by the Engineer or Subsequent Engineer, Developer will construct and install all necessary wastewater collection facilities to serve the Site and contiguous properties, including but not limited to manholes, lift stations (with on-site backup generators), force mains, odor control devices, and other facilities as are reasonably required to provide adequate wastewater services (previously denominated herein as the "Facilities"). Wastewater collection mains will have a

minimum diameter of eight (8) inches except where otherwise approved by Utility. Developer shall interconnect the wastewater facilities to Utility's wastewater system as shown on the Site's plat.

2. All materials used by the Developer for said Facilities shall be new, first-class, and suitable for the uses made thereof.
3. All Facilities constructed and installed by Developer pursuant to Article II shall be constructed and installed without cost or expense to Utility.
4. All plans, specifications and construction of the Facilities shall be in accordance with the Engineer's or Subsequent Engineer's plans and specifications, and, therefore, in compliance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies with jurisdiction over the same.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur during the construction of the Facilities due to the acts or omissions of Developer, anyone acting on Developer's behalf, or anyone under Developer's supervision and control, including but not limited to claims made by Developer's employees. Developer shall, at its own cost and expense, pay all costs and other expenses arising from such suits or incurred in connection therewith, including reasonable attorneys' fees and costs associated with the indemnification provided to the Utility under this Agreement.
6. The Parties shall cooperatively obtain all requisite permits, zoning variances, and other approvals required to build the Facilities prior to construction.

7. Except as provided in Article V, all Facilities installed by Developer pursuant to this Agreement shall become the property of Utility upon completion of the first phase of the project, and incrementally thereafter with the completion of each subsequent phase (if applicable), with the exception of the residential service lines for which each residential unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities' construction herein. Developer agrees to provide to Utility documentary evidence, in form satisfactory to Utility, sufficient to establish the original cost of the Facilities.
8. Subject to Article V, as set forth elsewhere herein, Developer shall grant, prior to the transfer to Utility of the Facilities, easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Site and providing reasonably adequate rights of access and working space for such purposes.
9. Developer shall provide to Utility, upon conveyance of the Facilities to Utility, as built drawings from the Engineer or Subsequent Engineer, and all other information reasonably required to operate, maintain, and repair the Facilities.

10. Developer shall not connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, and written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction over the same.
11. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least twenty-four (24) hours in advance of the inspection, excluding weekends and official Utility holidays. Utility's failure to inspect within another (24) hour period shall be deemed authorization to backfill and cover by Developer.
12. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
13. Upon Developer's satisfaction of its obligations under this Agreement, Utility will provide adequate initial sewer capacity for up to two hundred and fifty (250) residential units (or the equivalent thereto in other commercially developed and/or residentially developed land contiguous to the Site).
14. Utility understands that Developer intends to build up to five hundred (500) additional units (or the equivalent thereto) beyond the initial two hundred and fifty (250) units treated herein. When additional units are added by the Developer, the Wastewater Treatment Plant expansion will be completed at the Developer's expense before capacity will be available for additional flow. Upon completion of the expansion of the Wastewater Treatment Plant, and upon DHEC

and PSC approval, Utility shall permit the additional units to connect and discharge into the Facilities. The Parties contemplate that up to seven hundred and fifty (750) residential users (or other users from commercially and/or residentially developed land contiguous thereto) total (five hundred (500) additional users) will be permitted to discharge into the Facilities upon completion of the expansion of the Wastewater Treatment Plant.

ARTICLE III

Utility Services, Connection Fees, Rates and Charges

1. Upon installation of the Facilities, Utility agrees to supply all customers within the Site, and contiguous properties developed by Developer, with adequate and customary sanitary sewer service, and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.
2. The Parties agree that the Facilities are being constructed for the benefit of lot owners at the Site and/or contiguous properties developed by Developer. Utility agrees not to provide sewer service from Facilities to any property outside of the Site, other than contiguous properties developed by Developer, without the prior written approval of the Developer.
3. Lot owners within the Site (or contiguous properties developed by Developer) are responsible for applying for and paying for service at the rate as in effect from time to time prior to the provision of utility service. Such fees, usage and all other incidental rates and charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service approved by the

South Carolina Public Service Commission (the "Commission" or "PSC") from time to time and then in effect and as otherwise provided herein.

4. Utility shall commence providing service upon completion of the Facilities and upon receiving necessary approvals from DHEC and PSC.

ARTICLE IV

Commission Approval

1. Within ten (10) business days following the execution of this Agreement, Utility will file a petition with the Commission requesting approval of this Agreement, if necessary. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission and any other approvals necessary to commence operations of the Facilities.

ARTICLE V

Option to Repurchase

1. Within 10 days of final execution of this Agreement, and as separate consideration for the Option to Repurchase contemplated by Article V of this Agreement, Developer agrees to pay and Utility agrees to accept the sum of one thousand dollars and no cents (\$1,000.00).
2. In exchange for payment under Article V, Utility grants Developer a Conditional Option to Repurchase (treated herein as "Repurchase Option") the Facilities, easements, rights of way, and all other property interests ("Property Interests") conveyed by Developer to Utility under the terms of this Agreement. All deeds and other documents later executed in furtherance of this Agreement shall reflect the existence of the Repurchase Option.

3. Developer will have an option to Repurchase the Property Interests for \$5,000.00 under the following circumstances:
- a. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility has engaged in gross misconduct or malfeasance.
 - b. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility failed to abide by applicable federal, state, or local laws and regulations.
 - c. A court of competent jurisdiction, or other authorized state, local, or federal agency, finds that Utility's conduct endangered, or continues to endanger, the health, safety, and welfare of individuals who reside at or near the Site.
 - d. Sewer services become available to the Site through a governmental or quasi governmental agency such as a municipality, public service district, the County or the State, or an organization or entity formed and existing under S.C. Code §33-36-10 *et seq* or later re-codification of the same. In such an event, and for the benefit of such governmental entity who later has the capability and willingness to furnish sewer services to the Site, Utility agrees to deed all Property interests in the Site and Facilities back to the Developer who will then deed any property interests required by the governmental entity to furnish services. All Property Interests shall be deeded to Developer at such time as the governmental entity has the ability to furnish sewer services and has agreed to provide the same.

- e. A determination by the PSC that Utility's rates, costs of services, administrative fees, and/or other applicable charges make this Agreement no longer competitive or commercially reasonable.
 - f. Utility declares bankruptcy or otherwise ceases its business.
- 4. In the event Utility desires to sell or assign the Property Interests to another entity, Developer will have a right to receive notice of Utility's intent to sell for a period of not less than one-hundred and twenty (120) days in advance of the date of sale. Such notice shall be given pursuant to the notice provisions contained herein. During the one-hundred and twenty (120) day period, Developer shall have a right of first refusal to purchase the Property Interests. Should Developer execute its right of first refusal within that period, Utility agrees to provide Developer additional time to secure any approvals, as necessary, required by governmental and regulatory authorities before final execution of Utility's sale of Property Interests to Developer. Developer or its assigns may repurchase Property Interests in an amount equal to five thousand dollars and no cents (\$5,000.00).
- 5. The Repurchase Option (including the right of first refusal) is assignable by Developer to the following entities:
 - a. Any Homeowners' Association organized and existing as a South Carolina corporation in conjunction with the Site;
 - b. Any subsidiary wholly owned by Developer after obtaining the requisite approvals from applicable regulatory authorities;
 - c. DHEC and/or any receiver appointed by DHEC or a Court of competent jurisdiction;

- d. A financially viable operator capable of performing this Agreement and obtaining the requisite approvals from applicable regulatory authorities.
6. If the Repurchase Option is exercised, Utility agrees to transfer, or cooperate in facilitating the transfer, of all permits and authorizations required to operate the Facilities and otherwise take any necessary actions to avoid disruption of sewer services to users of the Facilities.
7. If the Repurchase Option is exercised, all remaining terms and conditions in this Agreement are terminated as between the Parties.
8. Developer shall obtain the requisite approvals from applicable regulatory authorities prior to exercising the Repurchase Option and in conjunction with replacing Utility with another authorized operator in order to avoid disruption of sewer services furnished to users of the Facilities. Developer shall have a reasonable period of time to attain all such approvals.

ARTICLE VI

Rates & Fees

1. Developer agrees to pay Utility an availability fee in the amount of fifteen dollars (\$15.00) per month/per lot if sewer service is available but not used, until the residential unit or its commercial equivalent is sold. Thereafter, the lot purchasers will be responsible for assuming responsibility of payment for sewer service.
2. Once sewer services are used by a lot purchaser, no availability fee shall be charged for that lot and sewer rates are locked in at a rate of \$30.50 per month for each residential unit for a period of 2 years.

3. Utility agrees that buyers of new residential units will not be charged a tap fee. However, a reconnect fee may be assessed to such homeowners should service be discontinued for failure to pay sewer service fees. The reconnect fee shall be in accordance with applicable PSC regulations then in effect and is now \$250.00.
4. In the event Utility deems it necessary to apply to the PSC for rate increases with respect to sewer services provided to property owners served by the Facilities, Utility agrees to furnish Developer with notice (in the manner provided under Article VII of this Agreement) of its intent to file such an application ten (10) business days in advance of filing for such a rate increase. At that time, Utility agrees to furnish Developer with the materials it intends to present in support of its application for the increase of rates. This provision is intended to provide Developer with advance notice of the Utility's application for rate increases so that Developer may meaningfully participate in and prepare for any hearings conducted on such issues should Developer have an objection to the same. This provision is in no way intended to abridge the exclusive jurisdiction of the PSC over such matters, which is acknowledged by all parties to this Agreement.
5. Utility agrees to furnish Developer with any notices or other documents received from governmental authorities (including but not limited to the PSC and SCDHEC) regarding matters which may impact recipients of sewer services from the Facilities, including but not limited to claims, liabilities, lawsuits, regulatory hearings, and rate increase hearings.

ARTICLE VII

General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by: labor strikes, by forces act of nature, fire, acts of the public enemy, impossibility of performance due to an intervening change in law, orders of a military body or agency, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
2. Utility shall purchase and maintain, or otherwise ensure that any entity with which it contracts to furnish services relating to the operation and maintenance of Facilities shall purchase and maintain, comprehensive general liability and other insurance with policy limits not less than one million dollars (\$1,000,000.00), or such other greater amount as determined to be commercially reasonable after an appropriate risk assessment has been conducted by Utility, and providing protection from the claims set forth in the subparagraphs below which may arise out of or result from Utility's ownership, operation, and maintenance of the Facilities:
 - a. Claims for damages because of bodily injury, occupational sickness, or disease, or death including disability benefits and other

worker's compensation acts benefits for the Utility's employees. (If and when Utility might have employees.);

- b. Claims for damages because of bodily injury, sickness, disease, or death of any person other than Utility's employees;
- c. Claims for damages because of injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle. (If and when Utility may have any motor vehicles.);
- d. Claims for damages of injury or destruction of real or personal property whether by negligence or nuisance.

Utility agrees to have Developer named as an additional insured under any and all such policies required to be maintained by this Paragraph.

- 3. Except as provided in this Agreement, Developer acknowledges that Utility's obligation to provide utility service is expressly conditioned upon the Parties' mutual understanding that Utility has no obligation to install, upgrade or expand any of the wastewater treatment facilities to serve the additional residential or commercial units at the property above the first two-hundred and fifty (250) units.
- 4. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquished on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
- 5. This Agreement and the representations and warranties contained herein shall survive, and continue in effect for a term of twenty (20) years, unless cancellation occurs by virtue of Repurchase as provided by Article V. However, in any event, the Option to Repurchase set forth in Article V shall not renew for more than

three successive terms, while the remaining terms of the contract can renew indefinitely.

6. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentations or breach of any representation, warranty or agreement on the part of Utility under this Agreement. Utility further agrees to indemnify Developer, its successors and assigns, for all liabilities relating to or arising out of Utility's ownership, maintenance, or operation of the Facilities or acts or omissions relating thereto. Utility agrees to pay all attorneys' fees, expert fees, and costs associated with indemnity provided to Developer under this Agreement. Developer agrees to indemnify Utility, its successors and assigns, and hold it harmless for all liabilities relating to or arising out of Developer's construction of the facilities or any upgrade of the facilities, and Developer further agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty, or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer. Developer agrees to pay all attorney's fees, expert fees, and costs associated with the indemnities provided to the Utility under this Agreement.
7. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.

8. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Jacabb Utilities, LLC
2 10 W. North Second Street
Seneca, SC 29678
ATTN: Steve Goldie
Managing Owner

If to Developer:

Tiger Management Investments, LLC
108 Ole Town Square
Central, SC 29630
ATTN: Robert N. Newton, Jr. &
Eric B. Newton
Managing Owners

9. Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.
10. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
11. This Agreement shall be governed by the laws of the State of South Carolina.
12. If this Agreement is not executed prior to October 1, 2007 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party, and the Agreement shall be deemed terminated.
13. The Parties represent and warrant that the undersigned individuals have been duly authorized to execute this Agreement and all other instruments contemplated in furtherance of the same.

ARTICLE VIII

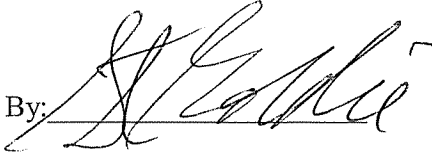
Remedies & Attorney's Fees

1. The Parties agree and believe that the subject matter of this Agreement creates and confers specific and unique rights and privileges for which money damages could not fully compensate, if lost due to the breach of either party. As a consequence, if a breach of the Agreement occurs, the Parties agree and stipulate to the availability of equitable remedies, including but not limited to, specific performance, temporary restraining order, preliminary injunctive relief, and permanent injunctive relief. All such equitable relief will be cumulative to the relief otherwise available to the Parties at law.
2. Notwithstanding any other provision herein, the Parties may seek preliminary injunctive relief in the Court of Common Pleas, and that Court shall retain jurisdiction relating thereto, even if the parties opt to arbitrate any remaining claims or issues.
3. In any action to enforce any provision contained in this Agreement, or seeking damages for any breach of any provision contained in this Agreement, the prevailing party will be entitled to recoup reasonable attorneys' fees, expert fees, litigation costs, copying costs, professional service fees, filing costs, paralegal expenses, investigative fees, travel costs, and all other fees, expenses, or costs associated with the legal action in which the Agreement was enforced.

[SIGNATURE PAGE ON FOLLOWING PAGE]

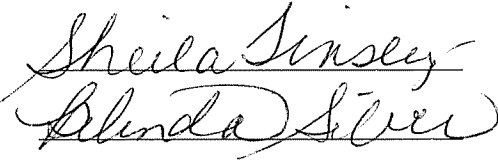
IN WITNESS WHEREOF, the Parties hereto have executed this instrument by
and through their authorized representatives set out below.

Jacabb Utilities, LLC

By: 

Its: Managing Owner

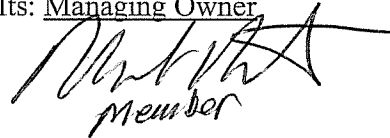
Attest:

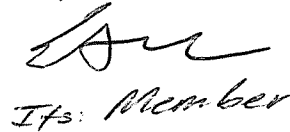


Tiger Management Investments, LLC

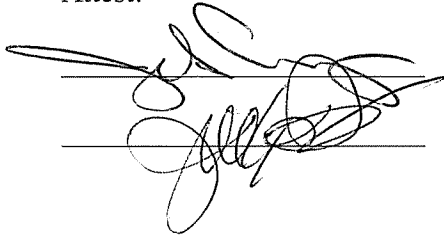
By: 

Its: Managing Owner


member


Its: Member

Attest:



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2007-_____-S

RECEIVED
2007 OCT -4 AM 11:07
SC PUBLIC SERVICE
COMMISSION


IN RE:

Application of Jacabb Utilities, LLC for
approval of a contract with Tiger
Management Investment, LLC to serve
Phase I of Rocky Ford Development

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the
Application by placing same in the care and custody of the United States Postal Service
with first class postage affixed thereto and addressed as follows:

Dukes Scott
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211


Sheila J. Tinsley

Seneca, South Carolina
This 3rd day of October 2007